

Application No. 10/656,622

### REMARKS

**Claims 1-4** are rejected under 35 USC 103 over Applicants' Admitted Prior Art (AAPA) in view of Weiss. AAPA is cited to show the general architecture of filters in a photosensitive apparatus. Weiss is cited for disclosing an apparatus for selecting a desired wavelength.

Claim 1, from which all of the claims under rejection are dependent, is directed to an imaging apparatus wherein, for a first set of photosensors, there is provided a first filter, which *admits* admit of orange and longer wavelengths, and a second "infrared" filter, which *blocks* light of orange and longer wavelengths. The effect of using both filters is that a relatively narrow "peak" of response is obtained near the orange portion of the visible spectrum: as can be seen in Figures 5 or 6 as filed, the RHP filter forms the left side of the peak, and the IRB filter forms the right side of the peak. The total peak— IRB and RHP acting together— approximates the behavior of an "ideal" orange-pass filter such as shown in Figure 4, which emulates the color response of the human eye.

Weiss is cited, in combination with the AAPA, for showing an optical device in which a first optical filter passes radiation of "longer wavelengths," and a second filter "absorb[s] optical radiation having a wavelength of greater than a desired range" (column 3, lines 5-10).

To combine references under 103, each reference must be considered as a whole, and there must a suggestion in the art to combine the references. According to MPEP § 2141, when applying 35 USC 103, the examiner must adhere to the basic tenets of patent law:

- A. The claimed invention must be considered as a whole;
- B. The references must be considered as a whole and must suggest the desirability of making the combination;
- C. The references must be viewed without the benefit of impermissible hindsight afforded by the claimed invention; and

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D. Obviousness must be determined under a reasonable expectation of success standard.

Weiss, the secondary reference, is related to "passive radiation shutter attenuators." As mentioned in Weiss at column 1, lines 15-18, an example of such an attenuator is sunglasses that darken when exposed to bright light. Weiss describes an "exciplex," which is a set of chemicals that exhibits this property. In the illustration of Weiss, an exciplex cell 10 is disposed between two filters 11 and 12, which are the filters having the cited properties.

As described in detail at column 2, lines 27-43 of Weiss, the purpose of the combined filters and exciplex is to change a window from effectively clear to effectively opaque in 100 psec, such as to "protect[ ] personnel or instrumentation ... [I]n the event of an intense flash of optical radiation ...." The filters cut off certain parts of the spectrum of light passing through the assembly, so the exciplex can, as needed, become opaque within its range of sensitivity and not accidentally let through certain ranges of light. However, there is no disclosure or suggestion in Weiss that any perceptible *color*, or specific portion of the visible spectrum, is of particular interest.

With regard to the rejection under 103 and its application under the MPEP as quoted above, the claimed invention as a whole is directed to emulating an ideal *orange* (as explicitly claimed) filter, using two filters in combination, one of which is an *infrared* (as explicitly claimed) filter. Weiss as a whole is directed simply to making an optical system opaque in a short period of time. A person of skill in the art reading Weiss would see only an interest in whether the exciplex was *clear or opaque*, with no teaching that any particular perceptible *color* is of interest. Indeed, to cite Weiss for teaching of admitting a perceptible single color such as orange would be to apply impermissible hindsight to the rejection, since no perceptible color is ever mentioned in Weiss. Therefore, Weiss cannot be combined with the AAPA to render Claim 1 or any of its dependent claims obvious.

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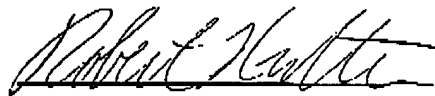
Claims 5-8 are rejected under 35 USC 103 over the AAPA in view of Weiss, and further in view of Solomon. Claims 5-8 are deemed allowable as being dependent on claim 1, the patentability of which has been argued above.

The claims are therefore in condition for allowance.

No additional fee is believed to be required for this amendment; however, the undersigned Xerox Corporation attorney authorizes the charging of any necessary fees, other than the issue fee, to Xerox Corporation Deposit Account No. 24-0025.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he is hereby requested to call the undersigned attorney at (585) 423-3811, Rochester, NY.

Respectfully submitted,



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